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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.686 of 2007

Narendrakumar Suryabali Singh .. Appellant
(Orig.Plff)

V/s

1. The Mumbai International Airport
Private Limited
2. The Municipal Corporation of
Gr.Bombay, Bombay .. Respondents
(Orig. Defts)

Shri Dhanesh R. Shah for Appellant
Shri Sunil Purohit i/b Wadia Gandhy and co. for the
Respondent no.1
Ms Geeta Joglekar for Respondnet no.2

CORAM:S.R.SATHE,J.
DATED:31-8-2007

P.C.:-

1. The appellant the original plaintiff in suit NO.2841 of 2007 has preferred this appeal against the order passed in Notice of Motion NO.2697 of 2007 whereby the plaintiffs application for temporary injunction restraining defendants from demolishing the suit premises admeasuring 18'x 10' having brick masonry wall and ACC sheet roof, situated at Singh Nivas, Patel Tabela No.5, Nehru Road, Vile Parle (East), Mumbai-57 and acting upon notice dated 21-7-2007 till the disposal of the suit, was dismissed.

2. For the sake of convenience hereinafter the parties shall be referred to as the plaintiff and defendants.

. Brief facts giving rise to this appeal are as under:-

3. The defendant no.1 is Air Port Authority of Mumbai International air Port Pvt. Ltd. Defendant no.2 is Municipal Corporation of Gr. Mumbai (hereinafter referred to as the MCG Bombay). According to the plaintiff he is residing in the suit premises and

carrying on business at the said place since prior to 1990. On 21-7-2007 the officers of the defendant no.1 went to the suit premises and pasted a notice dated 21-7-2007 stating therein that the suit premises along with other structures if not removed on or before 23-7-2007, will be removed/demolished by the concerned authorities at their risk and costs. Thereafter on 24-7-2007 the officers of the defendant no.1 even tried to demolish the suit premises and other premises in that locality. However, as the said action of the defendant no.1 was strongly opposed by the residents in that locality, the defendant no.1 could not demolish the suit structure. As the defendant no.1 was acting high handely, the plaintiff filed present suit for permanent injunction for declaration that the suit notice dated 21-7-2007 by the defendant no.1 is illegal and void, the same is not binding on the plaintiff and the defendants cannot take action and demolish the suit premises on the basis of the said notice.

4. The plaintiff filed the above mentioned Notice of Motion and prayed for temporary injunction. The defendant no.1 filed affidavit in reply and resisted the Notice of Motion. They contended that the land under the suit structure is owned by Air Port authority and plaintiff is not having any right, title and interest in the same. the defendant also denied plaintiff's allegation that the plaintiff is carrying on business in the suit premises or residing their since prior to 1990. The defendant further contended that the land under structure as well as adjoining land has bene taken by the defendant no.1 for extension of the Air port for public purpose and in public interest. It was, therefore, contended that the plaintiff has no prima facie case and if injunction as prayed for is granted in favour of the plaintiff then irreparable loss and inconvenience would be caused to the defendant no.1. The defendant therefore prayed for dismissal of the Notice of Motion.

5. After considering the arguments advanced by the advocates on both sides and perusing the documents on record, the learned trial Judge came to the conclusion that there is nothing to show that the plaintiff is the owner of the suit structure. The suit structure is made by making encroachment on the defendants' land and the defendant no.1 is entitled to demolish the suit structure. He also held that balance of convenience is in favour of the defendant no.1. Naturally he dismissed the plaintiff's notice of motion.

6. Being aggrieved by the said order the plaintiff has filed the present appeal. In this appeal before me, Shri Anil Singh, learned Advocate for the plaintiff has urged two points. Firstly, he submitted that the

learned trial Judge did not appreciate the documents produced on record. According to him, there was sufficient material to show that the plaintiff is in occupation of the suit premises since prior to 1990. He, therefore, submitted that though there was nothing on record to show that the plaintiff is the owner of the suit property still defendant no.1 is not entitled to take the law in their own hand and demolish the suit structure without following due process of law. He also submitted that as per Government Policy the defendants are under obligation to provide alternate accommodation to the plaintiff. He, therefore, submitted that the plaintiff has made out a prima facie case and if injunction is not granted irreparable loss will be caused to the plaintiff. As against this, Shri Purohit, learned Advocate for the defendant no.1 submitted that though the plaintiff urged in the plaint that he is residing in the suit premises, the premises were in fact used for business and the plaintiff has not come to the court with clean hands. Secondly, he canvassed before me that when admittedly the land below the structure is owned by the defendant no.1 and the plaintiff has made an encroachment on the same the defendant no.1 is entitled to demolish it. Thus, according to him plaintiff has failed to make out any prima facie case and the learned trial Judge has rightly rejected the plaintiff's application. He, therefore, submitted that the appeal be dismissed.

7. The plaintiff has produced the xerox copy of his ration card. From perusal of the same it appears that he is residing in the suit premises. He has also produced xerox copy of the electricity bill and electoral roll. However, from these documents it cannot be said that he is in occupation of the suit premises since 1990 because the above mentioned documents are pertaining to the recent period. From the photograph which is produced by the plaintiff, it is very clear that existing suit premises is the shop premises. Shri Purohit, learned Advocate for the defendant no.1 argued before me that the plaintiff has falsely alleged that the suit premises is residential premises but it is in fact shop and as such it be held that the plaintiff has not come with clean hands and has suppressed the material evidence. However, if we peruse the plaint, it is very clear that right from the beginning plaintiff has stated that the suit premises are being used for residence as well as for commercial purpose. So, there is no substance in the argument advanced by the learned Advocate for the defendant no.1 in this behalf.

8. It is pertinent to note that though the plaintiff is in occupation of the suit premises he has not produced any document to show that he has paid the municipal taxes to show that he is the owner of the land below the

suit structure. In fact, it is not disputed by the plaintiff that defendant no.1 is the owner of the land below the suit structure. It is also submitted even by the plaintiff's Advocate that the suit structure was initially of two storied, however, the first floor of the same has been demolished by the defendant. Not only that but according to the plaintiff first floor of many premises in the said locality has been demolished by the defendants. Thus from the material on record it does appear that the suit premises is amounting to an encroachment on the defendants' land. However, the question arises whether merely because it is encroachment, the defendant no.1 can take the law in their hands and demolish the suit structure immediately without following due process of law.

9. Shri Purohit, learned Advocate for the defendant no.1 submitted that as per the provisions of Section 28f of the Air Port Authority of India Act 1994, the defendant no.1 is entitled to demolish the suit structure. In order to find out whether defendant no.1 has such authority it would be worthwhile to see what Section 28f of Air Port authority of India Act 1994 says. It runs as follows :-

.SP1

> 28F. Power to remove unauthorized constructions, etc. (1) No person shall-
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> (a) erect or place or raise any building or any movable or immovable structure or fixture;
>
> (b) display or spread any goods;
>
> (c) bring or keep any cattle or other animal,
>
> on or against or in front of, any airport premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such airport premises.
>
> (2) Where any building or other immovable structure or fixture has been erected, placed or raised in any airport premises in contravention of the provisions of sub-section (1), the eviction officer may serve on the person erecting such building or other structure or fixture, a notice requiring him either to remove or show cause why he shall not remove such building or other structure or fixture to or from the airport premises within such period, not being less than seven days but not exceeding

thirty days as may be specified in the notice, and on the omission or refusal of such person to show cause, or to remove such building or other structure or fixture from the airport premises, or where the cause shown is not, in the opinion of the eviction officer, sufficient, the eviction officer may, by order, remove or cause to be removed the building or other structure or fixture from the airport premises and the cost of such removal shall be recoverable from such person as an arrear of land revenue".

.SP2

10. From the bear reading of the above mentioned sub Section 2 it is crystal clear that even for removing the unauthorised encroached portion, the defendant no.1 has to give show cause notice for the period not less than 7 days to the unauthorised occupier and it is only after he fails to show satisfactory cause or fails to remove the structure as directed, thereafter the defendant no.1 is entitled to demolish the said structure. In the instant case, admittedly, such show cause notice as contemplated under Section 28F(2) was given on 21-7-2007 and the occupant was asked to remove the suit structure by 23-7-2007. It obviously means that period mentioned in the above sub Section 2 was not observed. So the action cannot be said to be legal and valid as per Section 28F(2) of the said Act. Naturally, the defendant no.1 is not entitled to demolish the said structure high handedly and without following due process of law.

11. the learned Advocate for the Defendant no.1 submitted that in Bombay Hawkers Union v/s Bombay@@ CCCCCCCCCCCCCCCCCCCCCCCCCC Municipal Corporation (1985) 3 SCC 528 AIR 1985 SC@@ CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC 1206), the Apex Court has observed :-@@ CCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

> "No one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. Public streets are meant for the use of the general public and cannot be used to facilitate the carrying on of private trade or business".

12. He, therefore submitted that if temporary injunction as prayed is granted it would cause irreparable loss and inconvenience not only to the defendant but to public at large. He submitted that in order to have extension of Air Port, it is necessary to demolish the suit structure. It is true that the plaintiff has no right, title or interest in the suit

property. However, having regard to the fact that the he is occupying the suit property for last several years by making an encroachment then when the land is owned by the defendant no.1 the defendant no.1 has to take legal course for removing the said encroachment. The defendant no.1 is under an obligation to follow the rules and procedure laid down under Air Port's Authority Act 1994. In the instant case as the notice in question given by the defendant no.1 is not in consonance with the provisions of Section 28F it can only be said that on the basis of the said notice the defendant no.1 is not entitled to demolish the plaintiff's structure. However, that does not mean that the defendant no.1 is not entitled to follow the dues procedure laid down under the above mentioned Act and take necessary legal steps for the demolition. so, considering this aspect I have no hesitation to hold that the plaintiff has made out a prima facie case to show that notice issued by the defendant no.1 is not legal and that defendant no.1 is not entitled to demolish the building on the basis of the said notice. So, presently the balance of convenience is certainly in faovur of the plaintiff.

13. From the perusal of the order passed by the learned trial court it appears that he has not at all taken into proper consideration the provisions of Section 28F under which the notice in question was bene issued by the defendant no.1. So, he reached to a wrong conclusion. It is, therefore, necessary to interfere with the order passed by the learned trial Judge.

14. Hence, I pass the following Order :-

ORDER@@
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1. A.O. is allowed.

2. The order passed by the Judge, City Civil Court, Mumbai dismissing the Notice of Motion No.2697 of 2007 is set aside.

3. The defendants and their agents and servants are hereby restrained from acting upon their notice dated 21-7-2007 (Exh.C to the plaint) and thereby demolishing the plaintiff's structure admeasuring 18' x 10' having brick masonry walls and ACC Sheets roof, situated at Singh Nivas, Patel Tabela No.5, Nehru Road, Vile Parle (East), Mumbai-57, till the disposal of the suit No.2841 of 207 filed in the city Civil Court, Mumbai.

4. Under the circumstances of the case, parties to bear their own costs of this appeal from order.

(S.R.SATHE,J.)

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